

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LONNIE LEE MANN,

Petitioner,

CASE NO. 1:18-CV-1162

v.

HON. ROBERT J. JONKER

TONY TRIERWEILER,

Respondent.

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed the Report and Recommendation filed by Magistrate Judge Kent in this action on September 30, 2019 (ECF NO. 16). The Magistrate Judge recommends that the Court decline to exercise jurisdiction over the petition and dismiss the petition without prejudice under the concurrent sentencing doctrine.¹ The Report and Recommendation was duly served on the parties. No objections have been filed under 28 U.S.C. §636(b)(1)(C).

Before Petitioner may appeal the Court's dismissal of his petition, a certificate of appealability must issue. 28 U.S.C. § 2253(c)(1)(B); FED. R. APP. P. 22(b)(1). The Federal Rules of Appellate Procedure extend to district judges the authority to issue certificates of appealability. FED. R. APP. P. 22(b); *see also Castro v. United States*, 310 F.3d 900, 901-02 (6th Cir. 2002). Thus the Court must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c); FED. R. APP. P. 22(b)(1); *In re Certificates of Appealability*, 106 F.3d 1306, 1307 (6th Cir. 1997).

¹ The Court notes that Petitioner's substantive claims were subsumed in a separate case he filed, *Mann v. Trierweiler*, No. 1:18-CV-1072 (W.D. Mich. filed Dec. 10, 2018), and failed on the merits.

A certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c). To make the required “substantial showing,” the petitioner must demonstrate that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Miller-El v. Cockrell*, 537 U.S. 322, 338 (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). The Court does not believe that reasonable jurists would find the Court’s assessment of the claims Petitioner raised debatable or wrong.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 16) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that Petitioner’s habeas petition (ECF No. 1) is **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that Petitioner’s request for a certificate of appealability is **DENIED**.

Dated: November 22, 2019

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE